

REMARKS

This Amendment is in response to the Final Office Action dated March 30, 2010. Applicant respectfully requests reconsideration and allowance of all pending claims in view of the above-amendments and the following remarks.

I. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-4 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Publication No. 2003/0100308 (“Rusch”).

With this Amendment, independent claims 1 and 15 are amended to include the elements of dependent claim 10, which was not rejected under §102(b). Thus, claims 1 and 15 together with their respective dependent claims are not anticipated by Rusch.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 5-11 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Rusch as applied to claims 1 and 15 above, and further in view of U.S. Publication No. 2005/0013264, (“Sundberg”).

Regarding the elements of dependent claim 10, Applicant agrees with the Examiner that Rusch and Sundberg do not explicitly disclose the limitation “wherein the terminal includes means for forced activation of said connection means, if a positive presence is not detected”, which has been introduced into claim 1 (“means for allowing a user to force the activation of said means for connecting, so that said terminal operates in said second mode, even if a positive presence is not detected”). Similar elements are added to independent claim 15.

The Examiner considers that this limitation is known by one of ordinary skill in the art.

A. Official Notice - Fails to Support Rejection

Indeed, the Examiner takes Official Notice that it is known to use a previous location information (for example GPS) when a current location information is not available, stating:

“if the current presence (or location) of an object is not known, then the previous known presence (or location is used)- for example, if the GPS doesn’t provide the

location of the user, the GPS relies on the previous locations as the current location”.

The Examiner considers that it would have been obvious to one of ordinary skill in the art to modify the radiocommunication terminal of Rusch and Sundberg to provide the ability to use previous location information when a current one is not available.

The Examiner further indicates that the motivation for the combination would be to provide the ability to continue to establish a connection instead of having no connection. Applicant respectfully disagrees.

Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing In re Knapp Monarch Co., 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

The statements above, for which official notice was taken, are far from being "capable of such instant and unquestionable demonstration as to defy dispute". In fact, they are erroneous and do not apply to the elements of Applicant's claim 10.

1. User Activated

Indeed, as mentioned in the example on page 16, lines 9-22 of the specification (Substitute Specification - Clean Version), when the terminal does not detect that it is located in an area covered by the local network (for example due to a dynamic reconfiguration of the cell identifiers performed by the operator), but its user knows that he is physically located in such an area, the user can force the terminal to attempt to use the services of the local network, on the basis of the last connection parameters stored.

Thus, an exemplary technical problem and solution that result is to provide a user with the ability to activate a connection to the local network, when the terminal does not detect that it is located in an area covered by the local network.

Applicant points out the fact that Rusch and Sundberg do not deal with the problem concerning the activation by a user of a connection to the local network, when the terminal does not detect that it is located in an area covered by the local network.

Therefore, one of ordinary skill in the art would clearly not have been encouraged by the teachings of Rusch and Sundberg to modify the radiocommunication terminal of Rusch and Sundberg to provide a user with the ability to activate a connection to the local network (for example, by means of a specific key on the terminal), in case of incorrect detection of presence by the terminal.

2. Official Notice Encourages Different Operation Than Claim Elements

In fact, using the Examiner's proposed reasoning to "rely on previous location" and "continue to establish a connection instead of having no connection", a person of ordinary skill in would be encouraged to design a terminal that, in the event that presence of the terminal in a geographic coverage area associated with a second, local network cannot be detected, maintains a connection using an available radiocommunication network (e.g., GSM), for example, "instead of having no connection" as encouraged by the Examiner.

Thus, the Examiner's statements above, for which official notice was taken, are far from being "capable of such instant and unquestionable demonstration as to defy dispute". In fact they do not support the rejections in any reasonable way.

Regarding all the aforementioned arguments, Applicant considers that the amended set of claims is new and non-obvious in view of Rusch and Sundberg.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: /David D. Brush/
David D. Brush, Reg. No. 34,557
900 Second Avenue South, Suite 1400
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

DDB/dmm